

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
KHADIJA STEPHEN

Plaintiff,

-against-

THE CITY OF NEW YORK, DETECTIVE  
FAWAD KHAN and "JOHN DOE AND  
JANE DOE #1-5" (the names John and Jane  
Doe being fictitious as their true names  
are presently unknown),

Defendants.  
-----X

Plaintiff, by her attorney, Law Office of Philip Akakwam, P.C., complaining of the  
defendants, The City of New York, Detective Fawad Khan and "John Doe and Jane Doe #1-5"  
(collectively "defendants"), upon information and belief alleges as follows:

### INTRODUCTION

1. This is an action at law to redress the deprivation under color of statute, ordinance, regulation, custom, or usage of rights, privileges, and immunities secured to the plaintiff by the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, and by Title 42 U.S.C. § 1983 [and § 1985], [and arising under the law and statutes of the City and State of New York].

2. Plaintiff seeks monetary damages for: the false arrest, false imprisonment and malicious prosecution of Plaintiff, Khadija Stephen, and otherwise, for the violation of Plaintiff's federally guaranteed constitutional and civil rights. Plaintiff seeks whatever other relief is appropriate and necessary in order to serve the interest of justice and assure that his remedy is full and complete.

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U.S. DISTRICT COURT  
EASTERN DISTRICT  
COMPLAINT

JURY DEMAND

14-00552

### **JURISDICTION**

3. The jurisdiction of this Court is invoked pursuant to and under 28 U.S.C. Sections 1331 and 1343[3] and [4] in conjunction with the Civil Rights Act of 1871, 42 U.S.C. Section 1983, and under the Fourth and Fourteenth Amendments to the United States Constitution.

4. Jurisdiction is also invoked pursuant to and under 28 U.S.C. Section 1367, entitled Supplemental Pendent Party Jurisdiction.

5. Plaintiff requests that the Court invoke pendent jurisdiction over any and all claims arising under the laws and Constitution of the State of New York.

6. The State law claims have a common nucleus of operative facts with the federally based claims and they arise out of the same transaction(s) and occurrence(s) giving rise to the Plaintiff's federally based claims and causes of action.

7. Plaintiff also invokes the jurisdiction of this Court in conjunction with the Declaratory Judgment Act, 28 U.S.C. Sections 2201, et seq., this being an action in which Plaintiff, while seeking monetary damages, also seeks declaratory and injunctive relief if such is deemed necessary and desirable and in the interest of justice in order to provide Plaintiff with a full and complete remedy for the violation of her rights.

### **PARTIES**

8. Plaintiff, a black female, is a resident of the City of New York, County of Kings and State of New York.

9. Upon information and belief and at all times relevant herein, defendants Detective Fawad Khan, and John Doe and Jane Doe #1-5 (hereinafter "defendant officers") were, and still are, agents and/or officers employed by defendant City of New York.

10. At all times herein, the defendant officers were acting under the color of their official capacity and their acts were performed under color of the statutes and ordinances of the City of New York and the State of New York. The defendant Police Officers were the servants, agents, and employees of their co-defendant, the City of New York. Notwithstanding the wrongful and illegal nature of their acts and conduct as hereinafter described, they were taken in and during the course of their duties and functions as New York City Police Officers and incidental to the otherwise lawful performance of the same.

11. The City of New York is a municipal entity existing under the laws and Constitution of the State of New York and was the employer of the defendant police officers through its Police Department - New York City Police Department- and the actions of the police officers complained of herein were done as part of the custom, practice, usage, regulation and/or direction of the City of New York.

12. Plaintiff is suing the defendant officers in their individual and official capacities.

**FACTS COMMON TO ALL CAUSES OF ACTION**

13. On or about August 30, 2012, at approximately 7:30 p.m., defendant officers, acting in concert and without probable cause, assaulted and arrested plaintiff at or close to the corner of Reid Avenue and Hancock Street, Brooklyn, New York, and charged plaintiff with Criminal Sale of a controlled substance in the third degree (PL 220.39(1), among other charges.

14. Plaintiff, however, did not sell any controlled substance and did not commit any offense against the laws of the City and/or State of New York for which she may lawfully be arrested.

15. At the time of the arrest, plaintiff was on a visit to her brother, Rashan Baugh,

who was also visiting his mother in Brooklyn. Mr. Baugh lives in New Jersey but was visiting his mother in Brooklyn at the time of the arrest of plaintiff.

16. As plaintiff was engaged in a conversation with her brother, Mr. Baugh and his friend, Poppy, defendant officers ran up to them.

17. Thereafter, defendant officers directed the plaintiff and Messrs. Baugh and Poppy to submit themselves to an illegal search, with defendant officers pushing, shoving and grabbing the plaintiff.

18. Although defendant officers did not find anything illegal from their search of the plaintiff, they nonetheless tightly handcuffed plaintiff with her hands placed behind her back. The handcuffs were placed so tight that it was hurting plaintiff's hand.

19. Then plaintiff was placed in a police vehicle by the defendant officers who thereafter transported her to the 81<sup>st</sup> Police Precinct where she was searched, fingerprinted, photographed and detained in a cell.

20. After detaining plaintiff at the Precinct for a lengthy period of time, plaintiff was transported to the Central Booking to await arraignment even though plaintiff did not commit any crime or offense and defendant officers did not find anything illegal from their unlawful and unreasonable search of the plaintiff.

21. While plaintiff was awaiting arraignment, defendant officers met with prosecutors employed by the Kings County District Attorney's Office.

22. During this meeting, defendant officers falsely stated to the prosecutors, among other things, that the plaintiff committed the charged offense(s).

23. Based on the false testimony of the defendant officers, the prosecutors initiated

criminal actions against the plaintiff.

24. Following her arraignment, plaintiff was required to return to court on numerous occasions to defend the false charges levied against her.

25. On or about March 29, 2013, all the charges levied against plaintiff were summarily dismissed.

26. That each and every officer who responded to and/or was present at the location of plaintiff's arrest and/or at the precinct or facility knew and was fully aware that plaintiff did not commit any crime or offense, and had a realistic opportunity to intervene to prevent the harm detailed above from occurring.

27. Nonetheless, defendant officers did absolutely nothing to discourage and prevent the harm detailed above from occurring and failed to intervene.

28. Plaintiff suffered physical injuries, including injury to her wrists. Moreover, plaintiff suffered and continues to suffer emotional distress, fear, embarrassment, humiliation, shock, loss of liberty, psychological trauma, pain, loss of wages and other financial loss and damage to reputation as a consequence of the defendants' unlawful conduct alleged herein.

29. The Plaintiff suffered violations of his federally guaranteed constitutional and civil rights including rights guaranteed to him under the Fourth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

30. Defendant City of New York, as a matter of policy and practice, has with deliberate indifference failed to properly sanction or discipline police officers including defendant officers in this case, for the violations of the constitutional rights of citizens, thereby causing police officers including defendant officers, to engage in unlawful conduct.

31. The policies and practices complained of herein also violate the rights of Plaintiff under the Constitution and laws of the City and State of New York.

32. The actions and conduct of the Defendant Officers and the policies and practices of the City of New York were negligent and were the proximate cause of damages to the Plaintiff.

33. The Defendant Officers acted together and in concert sanctioning and ratifying and otherwise condoning the wrongful actions being taken by each of the defendant Officers in a collective manner and fashion.

34. The Plaintiff has no other adequate remedy at law but for this action.

**AND AS FOR A FIRST CAUSE OF ACTION**

35. Plaintiff reiterates paragraphs 1 through 34 and incorporates such by reference herein.

36. The conduct of the defendant officers, as described herein, amounted to false arrest, false imprisonment, use of excessive force, illegal and unreasonable stop, frisk, search and seizure, racial profiling, pattern of harassment, malicious prosecution, abuse of authority, fabrication of evidence, and violation of due process rights.

37. Such conduct violated plaintiff's right under 42 U.S.C. § 1983 and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. By violating plaintiff's constitutional rights under color of State Law, the Defendant Police Officers violated the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

38. Consequently, plaintiff has been damaged and hereby demands compensatory and punitive damages in an amount to be proven at trial against each of the defendants, individually and severally.

**AND AS FOR A SECOND CAUSE OF ACTION**

39. Plaintiff reiterates paragraphs 1 through 38 and incorporates such by reference herein.

40. Defendant Police Officers falsely arrested and imprisoned plaintiff in violation of the Common Law.

41. The false arrest and imprisonment of plaintiff was carried out without a valid warrant, without plaintiff's consent, and without probable cause or reasonable suspicion.

42. Defendant Police Officers acted with malice and reckless and intentional disregard for Plaintiff's rights under common law when they arrested and imprisoned Plaintiff without any justification. Therefore, said Defendant Police Officers are guilty of egregious and gross misconduct towards plaintiff, and plaintiff prays for an award of punitive damages against the individual defendants.

43. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff sustained the damage herein before stated.

**AND AS FOR A THIRD CAUSE OF ACTION: ASSAULT AND BATTERY**

44. Plaintiff reiterates paragraphs 1 through 43 and incorporates such by reference herein.

45. The conduct of defendant officers, as described herein, amounted to assault and battery on the plaintiff. The assault and battery was willful, unlawful, unwarranted, and intentional.

46. By reason of and as a consequence of the assault, plaintiff suffered and continues to suffer injuries to wrists, emotional distress, fear, embarrassment, humiliation, shock, discomfort, loss of liberty, pain and damage, and damage to reputation.

47. Upon information and belief, defendant City of New York had sufficiently specific

knowledge or notice of defendant officers' propensity for acts complained of herein and that their acts could reasonably have been anticipated. However, defendant City of New York failed to take any appropriate actions to assure plaintiff's safety and security and failed to protect and/or safeguard plaintiff's interests.

48. That defendant City of New York's failure to assure plaintiff's safety and security was a proximate cause of plaintiff's injuries.

**AND AS FOR A FOURTH CAUSE OF ACTION: MALICIOUS PROSECUTION**

49. Plaintiff reiterates paragraphs 1 through 48 and incorporates such by reference herein.

50. Plaintiff was subjected to malicious prosecution and malicious abuse of the criminal process in violation of his right under the Fifth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

51. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiff sustained the damage herein before stated.

**AND AS FOR A FIFTH CAUSE OF ACTION**

52. Plaintiff reiterates paragraphs 1 through 51 and incorporates such by reference herein.

53. By arresting, detaining and maliciously prosecuting plaintiff, without justification, probable cause or reasonable suspicion, and assaulting plaintiff and using excessive force against her, the defendant officers, deprived plaintiff of rights, remedies, privileges and immunities guaranteed to every New Yorker by Article 1, Section 12 of the New York State Constitution.

54. In addition, the defendant officers conspired among themselves to deprive plaintiff of his constitutional rights secured by Article 1, Section 12 of the New York State Constitution, and took numerous overt steps in furtherance of such conspiracy, as set forth above.



55. The Defendant Officers acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employment as NYPD Officers. Such acts by Defendant Officers were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive the plaintiff of his constitutional rights secured by Article 1, Section 12 of the New York State Constitution.

56. Defendants, their officers, attorneys, agents, servants and employees were responsible for deprivation of Plaintiff's State Constitutional rights. Defendant City, as employer of each of the defendant officers, is responsible for their wrongdoing under the common law doctrine of respondeat superior.

57. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiff sustained the damage herein before stated.

**AND AS FOR A SIXTH CAUSE OF ACTION**

**(Monell/42 U.S.C. Section 1983: Claim Against Defendant City of New York)**

58. Plaintiff reiterates paragraphs 1 through 57 and incorporates such by reference herein.

59. The foregoing violations of plaintiff's federal constitutional rights and resultant injuries were directly, foreseeably and proximately caused by conduct, chargeable to defendant City of New York, amounting to deliberate indifference to the constitutional rights of persons, including Plaintiff, who are investigated, arrested, or prosecuted for alleged criminal activities.

60. Defendant City of New York failed to provide proper training and/or failed to insure that the training provided was adequately understood in regard to the following tasks which police officers commonly perform:

- (a) The determination of probable cause to make an arrest;
- (b) The duty to take into account the totality of the circumstances in determining the existence of probable cause to make an arrest;
- (c) The circumstances under which investigative detentions may lawfully occur and the manner in which they may lawfully be executed;
- (d) The very limited circumstances under which a warrantless search may be carried out.

61. Defendant City of New York, acting through the New York Police Department, had actual and/or de facto policies, practices, customs and/or usages of failing to properly train, supervise or discipline its police officers concerning correct practices in conducting investigations, the use of force, interviewing of witnesses and informants, assessment of the credibility of witnesses and informants, reasonable search of individuals and/or their properties, the seizure, voucher and/or release of seized properties, obligation not to promote or condone perjury and/or assist in the prosecution of innocent persons and obligation to effect an arrest only when probable cause exists for such arrest.

62. Additionally, defendant City of New York, acting through the Office of the District Attorney of the County of Kings, had actual and/or de facto policies, practices, customs and/or usages of failing to properly train, supervise, and discipline its Assistant District Attorneys and employees concerning correct practices in conducting investigations, interviewing witnesses and informants, assessing the credibility of witnesses and informants, the initiation and/or prosecution of criminal actions, obligation not to promote or condone perjury and/or assist in the prosecution of innocent persons and the duty and/or obligation of candor toward the court.

63. Defendant City of New York, acting through aforesaid NYPD and District Attorney, had actual and/or de facto policies, practices, customs and/or usages of wrongfully arresting, illegally stopping, frisking, searching, seizing, abusing, humiliating, degrading and/or maliciously prosecuting individuals who are members of racial/ethnic minority groups such as plaintiff, who is black, on the pretext that they were involved in narcotics, drugs, guns and/or other illicit activities.

64. The aforesaid deliberate or *de facto* policies, procedures, regulations, practices and/or customs (including the failure to properly instruct, train, supervise and/or discipline employees with regard thereto) were implemented or tolerated by policymaking officials for the Defendant City of New York, including but not limited to, the New York City Police Commissioner, who knew or should have known that such policies, procedures, regulations, practices and/or customs concern issues that regularly arise in the investigation and prosecution of criminal cases;

65. The policymaking officials at NYPD know or ought to have known that such issues that regularly arise in the investigation and prosecution of criminal cases either present police employees with difficult choices of the sort that instruction, training and/or supervision will make less difficult or that the need for further instruction, training, supervision and/or discipline was demonstrated by a history of police employees mishandling such situations and making the wrong choice.

66. The aforementioned policymaking officials knew that the wrong choice by police officers concerning determination of probable cause will frequently cause the deprivation of the constitutional rights of criminal suspects or defendants and cause them constitutional injury.

67. Further, the existence of the aforesaid unconstitutional policies, practices, customs

and/or usages may be inferred from repeated occurrences of similar wrongful conduct.

68. For example, in *Floyd v. City of New York*, 813 F. Supp. 2d 417, 422 (S.D.N.Y. 2011), the Southern District of New York observed that the City of New York had been accused of racial profiling on multiple occasions and that it had settled at least one of the lawsuits brought against it concerning racial profiling.

69. In *Ligon v. City of New York*, 12 Civ. 2274, 2013 U.S. Dist. LEXIS 22383, at \*9-\*10 (S.D.N.Y. Feb. 14, 2013), the Court determined that the City of New York, acting through the NYPD, engages in illegal and unreasonable stop, frisk, search and seizure. *See also Davis v. City of New York*, 10 Civ. 0699, 2013 U.S. Dist. LEXIS 45601 (S.D.N.Y. March 28, 2013) (same).

70. Additionally, NYPD Police Officer Michael Carsey was recently convicted of felonies for lying under oath and falsifying information while applying for a search warrant.

71. Police Officer Carsey's supervisor, Sergeant William Eiseman, had earlier admitted to fabricating facts to justify searching vehicles and homes for cocaine, marijuana and guns, filing false information to obtain search warrants and performing illegal searches of vehicles and homes. That Sergeant Eiseman admitted to perjury and fabricating evidence against innocent persons that he falsely arrested and charged with possession of narcotics and/or illegal drugs, and also admitted to training numerous young police officers to commit similar crimes and/or offenses.

72. In addition, in or about October 2011, Detective Stephen Anderson testified against Detective Jason Arbeeney, a veteran of the NYPD. That Detective Anderson testified that, among other things, it is a common practice within the NYPD to plant narcotics and/or illegal drugs -- commonly known within the NYPD as "flaking" -- on innocent persons in order to meet arrest

quotas. Detective Anderson referred to the practice of planting narcotics and/or illegal drugs on innocent persons as “attaching bodies” to the narcotics and/or illegal drugs. According to Detective Anderson, this practice “was something I was seeing a lot of, whether it was from supervisors or undercovers and even investigators.”

73. Regarding the issue of arrest quotas, Detective Anderson confirmed that the NYPD requires officers to fill quotas, and testified that even as a detective “you still have a number [of arrests] to reach while you are in the narcotics division.”

74. Recently, a jury determined that officers of the NYPD are permitted, as a policy and/or practice, to fill their arrest quotas by making unlawful arrests. *See Bryant v. City of New York*, Index No. 22011/07 (Sup. Ct. County of Kings Feb. 18, 2011).

75. Prior to his testimony, Detective Anderson and his partner provided false testimony in court claiming that they purchased cocaine from certain individuals who as surveillance video later confirmed did not have any sort of contact or communication with Detective Anderson and his partner during the time period that Detective Anderson and his partner claimed to have purchased the controlled substances and/or illegal drugs.

76. That Detective Arbeeney was subsequently convicted of planting controlled substances and/or illegal drugs on a woman and her boyfriend, and was convicted of the charges against him including official misconduct, offering a false instrument for filing and falsifying business records.

77. That the New York Supreme Court, County of Kings, Criminal Term, Gustin L. Reichbach, J., determined that the NYPD’s drug unit has a system of flawed procedures that caused Detective Arbeeney’s unlawful actions. Judge Reichbach further determined that the

NYPD's drug unit has a widespread culture of corruption and has adopted a "cowboy culture" and practice which he described as "[a]nything goes in the never-ending war on drugs." That Judge Reichbach expressed shock at what he described as "the seeming pervasive scope of misconduct [and even worse] . . . the seeming casualness by which such conduct is employed."

78. In addition to the named individual defendants, several officers of the NYPD assigned to the NYPD-81st Precinct -- as the named individual defendants -- routinely make unlawful arrests charging innocent persons with various crimes and/or offenses.

79. That most of the arrests and charges made by officers assigned to the NYPD-81st Precinct are usually voided and/or dismissed by prosecutors for lack of evidence.

80. That defendant City of New York maintained the above described policies, practices, customs or usages knowing fully well that the policies, practices, customs or usages lead to improper conduct by its police officers and employees. In failing to take any corrective actions, defendant City of New York acted with deliberate indifference, and its failure was a direct and proximate cause of plaintiff's injuries as described herein.

81. Said notice is also based upon the inherent obviousness of the need to train, supervise and discipline police officers in their aforementioned constitutional obligations to counteract the pressures on officers and the powerful incentives they have to close cases and to obtain arrests and convictions.

82. During all times material to this Complaint, the Defendant City and its policy making officials owed a duty to the plaintiff and the public at large, which they knowingly and intentionally breached, or to which they were deliberately indifferent, to implement policies, procedures, customs, practices, training and discipline sufficient to prevent or deter conduct of

their employees violating the aforementioned constitutional rights of innocent members of the public including plaintiff.

83. As part of its policies, customs and practices, Defendant City has failed to take proper corrective and punitive actions against overreaching police officers thus creating the impression that crime reduction is paramount and triumphs over constitutional rights in all circumstances.

84 As a result of inadequate training of police officers on the practical meaning of probable cause for arrest, officers frequently detain and/or arrest citizens based on their hunches, inklings, or mere suspicion and without reasonable or probable cause.

85. The aforesaid policies, procedures, regulations, practices and/or customs of Defendant City and its police department, the NYPD, were collectively and individually a substantial factor in bringing about the aforesaid violations by the individual police defendants of Plaintiff's rights under the Constitution and laws of the United States.

86. By virtue of the foregoing, Defendant City of New York is liable for having substantially caused the foregoing violations of Plaintiff's constitutional rights and his constitutional injuries.

**AND AS FOR A SEVENTH CAUSE OF ACTION**

**(Negligent Hiring, Training and Supervision Under State Law; Defendant City)**

87. Plaintiff reiterates paragraphs 1 through 86 and incorporates such by reference herein.

88. By virtue of the foregoing, defendant City of New York is liable to plaintiff because of its intentional, deliberately indifferent, careless, reckless, and/or negligent failure to adequately hire, train, supervise, and discipline its agents, servants and/or employees employed by the NYPD with regard to their aforementioned duties.

89. As a direct and proximate result of the acts and omissions of the defendants described in this Complaint, plaintiff suffered a significant loss of his liberty and violation of his federal constitutional rights, was prevented from attending to his necessary affairs and suffered and continues to suffer significant emotional pain, distress, humiliation and embarrassment.

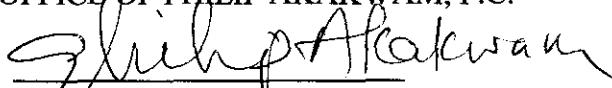
**WHEREFORE**, Plaintiff demands judgment against the Defendants as follows:

- i. For compensatory damages in an amount to be determined at trial - against all defendants, jointly and severally;
- ii. For punitive damages against the individual defendants in an amount to be determined at trial;
- iii. For reasonable attorneys' fees, together with costs and disbursements of this action, pursuant to 42 U.S.C. § 1988 and to the inherent powers of this Court;
- iv. For pre-judgment interest as allowed by law; and
- v. For such other and further relief as the court deems just and proper.

Dated: Brooklyn, New York  
January 20, 2014

LAW OFFICE OF PHILIP AKAKWAM, P.C.

By:



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